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SERVICE DATE - DECEMBER 21, 2001

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-596]

New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad, Inc., in New York, NY

On December 4, 2001,¹ New York City Economic Development Corporation (NYCEDC) on behalf of the City of New York (City) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the abandonment by New York Cross Harbor Railroad, Inc. (NYCH), of the Bush Terminal Yard (a/k/a “First Avenue Yard”) and the Harborside Industrial Center (a/k/a “Brooklyn Army Terminal”) (jointly the Tracks and Facilities), in New York, Kings County, NY. The line traverses United States Postal Service ZIP Codes 11232 and 11220. There is no indication that there are stations on the line.

NYCEDC maintains that NYCH has caused and will continue to cause significant environmental damage to the tracks and facilities by dumping chemicals and pesticides used in the operation and maintenance of a railroad. NYCEDC indicates that it filed the

¹ On December 4, 2001, NYCEDC filed a petition for a 1-day extension of time in order to gather the information necessary to file its application for adverse abandonment. Board regulations and case law permit extension of time for filing when good cause is shown and no party will be prejudiced by the delayed submission. See Huron Valley Steel Co. v. Seaboard System RR, Inc., ICC Docket No. 39886 (ICC served Feb. 12, 1988). The extension is granted and the application is accepted because NYCEDC has shown good cause and no party will be prejudiced by the delay.

adverse abandonment application so that it could proceed with plans to bring suit in state court to evict NYCH from the tracks and facilities.² NYCEDC also claims that NYCH has incurred \$20,107.61 in late fees since July 1995.

In an application by a third party for a determination that the public convenience and necessity permits service over a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities. See Kansas City Pub. Ser. Frgt. Operations Exempt. – Aban., 7 I.C.C.2d 216, 224-26 (1990).

NYCEDC states that, to the best of its knowledge, the line does not contain any federally granted rights-of-way. Any documentation in NYCEDC's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment was filed with the application.³

² NYCH does not own the tracks and facilities or the underlying land; rather it leases the tracks and facilities from the City. NYCEDC contends that NYCH has breached its lease by violating local fire codes and state and Federal environmental law. In its Combined Environmental and Historic Report, NYCEDC indicates that the tracks and facilities will continue to be used for rail purposes because of the planned re-development and expansion of the adjacent maritime terminals in order to promote water to rail movement of cargo.

³ In a decision served in this proceeding on December 3, 2001, NYCEDC was granted a waiver from many of the filing requirements of the Board's abandonment regulations at 49 CFR 1152 that were found to be not relevant to NYCEDC's adverse
(continued...)

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including protestant's entire opposition case) by January 18, 2002. Applicant's reply is due on February 4, 2002. Because the line is publicly owned and is expected to remain in rail service under some new arrangement, trail use/rail banking, and public use requests are not appropriate. In light of the proposed eviction and subsequent resumption of rail service, offers of financial assistance to acquire or subsidize service on the line are not required by the public interest and will not be entertained in this proceeding.

Persons opposing the abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-596 and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Charles A. Spitulnik and Alex Menendez, One Massachusetts Ave, NW, Suite 800, Washington, DC 20001.

³(...continued)
abandonment application. On December 10, 2001, NYCEDC filed a supplement to its application to address the requirements not waived in the December 3 decision. The supplement is accepted for filing.

The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment or discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1552. [TDD for the hearing impaired is available at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: December 14, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams

Secretary